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7

Attorneys For Defendants  
8 CITY AND COUNTY OF SAN FRANCISCO ET AL.

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 CLIFFORD COOK,

12 Plaintiff,

13 vs.

14 CITY AND COUNTY OF SAN  
FRANCISCO, ANTONIO FLORES,  
15 DON SLOAN, MARSHA ASHE, and  
DOES 1-50, inclusive,

16 Defendants.  
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Case No. C 07 2569 CRB

**SECOND SUPPLEMENTAL  
DECLARATION OF MARGARET W.  
BAUMGARTNER IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

Date: May 9, 2008

Time: 10:00 a.m.

Place: Ctrm. 8, 19<sup>th</sup> Fl.

Date action filed:

Trial date: None set

1 I, Margaret W. Baumgartner, declare:

- 2 1. I am a Deputy City Attorney with the San Francisco City Attorney's Office. I am the attorney  
3 assigned to this matter. I have personal knowledge of the facts contained herein, except for  
4 those facts stated on information and belief, and as to those facts I believe them to be true. If  
5 called upon to testify, I could and would testify competently hereto.
- 6 2. Attached hereto as Exhibit A are pertinent pages from the deposition of Captain Marsha Ashe.
- 7 3. Attached hereto as Exhibit B are pertinent pages of the deposition of Captain Kevin Cashman
- 8 4. Attached hereto as Exhibit C are pertinent pages of the deposition of Lieutenant Donald Sloan
- 9 5. Attached hereto as Exhibit D are pertinent pages of the deposition of Inspector Antonio Flores
- 10 6. Attached here as Exhibit E are pertinent pages of the deposition of Assistant District Attorney  
11 Elizabeth Aguilar Tarchi.

12 I declare under the penalty of perjury under the laws of the State of California that the  
13 foregoing is true and correct.

14 Dated: April 25, 2008

15  
16 /s/ Margaret W. Baumgartner  
17 Margaret W. Baumgartner  
18 Deputy City Attorney  
19  
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# **EXHIBIT "A"**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

---oOo---

CLIFFORD COOK,

Plaintiff,

vs.

No. C 07-02569 CRB

CITY AND COUNTY OF SAN  
FRANCISCO, ANTONIO FLORES, DON  
SLOAN, MARSHA ASHE, and DOES  
1-50, inclusive,

Defendants.

DEPOSITION OF CAPTAIN MARSHA ASHE

January 16, 2008

REPORTED BY: A. MAGGI SAUNDERS,

C.S.R. No. 2755



**A. Maggi Saunders & Associates**  
**Certified Shorthand Reporters**

57 Plymouth Avenue, Mill Valley, California 94941

License No. 2755

(415) 383-6281

1 BE IT REMEMBERED that, pursuant to Notice  
2 of Taking Deposition, and on Wednesday, the 16th day  
3 of January, 2008, commencing at the hour of 10:13  
4 o'clock a.m. thereof, at the SCOTT LAW FIRM, 1375  
5 Sutter Street, Suite 222, San Francisco, California  
6 94109, (415) 561-9600, before me, A. MAGGI SAUNDERS,  
7 a Certified Shorthand Reporter in and for the State  
8 of California, there personally appeared

9  
10 CAPTAIN MARSHA ASHE,  
11  
12 called as a witness by the Plaintiff CLIFFORD COOK,  
13 who, being by me first duly sworn, was thereupon  
14 examined and interrogated as hereinafter set forth.  
15

16 ---oOo---

17  
18 SCOTT LAW FIRM, 1375 Sutter Street, Suite  
19 222, San Francisco, California 94109, (415) 561-9600,  
20 represented by JOHN HOUSTON SCOTT, ESQ., appeared as  
21 counsel on behalf of Plaintiff CLIFFORD COOK.  
22

23 DENNIS J. HERRERA, CITY ATTORNEY, OFFICE OF  
24 THE CITY ATTORNEY, CITY AND COUNTY OF SAN FRANCISCO,  
25 1390 Market Street, Sixth Floor, San Francisco,



1 California 94102, (415) 554-3800, represented by  
2 MARGARET W. BAUMGARTNER, DEPUTY CITY ATTORNEY,  
3 appeared as counsel on behalf of Defendants CITY AND  
4 COUNTY OF SAN FRANCISCO.

5  
6 ALSO PRESENT WAS THE PLAINTIFF, CLIFFORD COOK.  
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DEPOSITION OF CAPTAIN MARSHA ASHE

1 Q. Okay. And were you aware that about  
2 10:00 o'clock that morning Inspector Flores met with  
3 Assistant District Attorney Aguilar-Tarchi?

4 A. No.

5 MS. BAUMGARTNER: Objection. Vague as to  
6 time.

7 MR. SCOTT: Q. At any time. Have you  
8 ever become aware of that?

9 A. I knew that they were meeting with her. I  
10 wasn't sure what time or when, or if they had met prior  
11 with her.

12 Q. And what did you understand to be the  
13 purpose of that meeting?

14 A. Going to review the facts of the case for  
15 a possible warrant.

16 Q. And who told you that?

17 A. It was -- We discussed it. It was what we  
18 had discussed.

19 Q. Okay. So was the decision to arrest going  
20 to be based on whether she would issue a warrant?

21 A. No.

22 Q. So you were going to make the arrest,  
23 whether or not a warrant would issue?

24 A. Yes.

25 Q. Okay. And whether or not the District

DEPOSITION OF CAPTAIN MARSHA ASHE

1 A. Because that's something worth knowing.

2 Q. Why?

3 A. Because I would want to ask her, "Why:  
4 What problems do you see with this case? And what, if  
5 any of those concerns, can we address before we make  
6 the arrest?"

7 Q. Okay. And if you had been told on the  
8 morning of July 27th, 2005, that the District  
9 Attorney's Office was not going to prosecute, would you  
10 have gone ahead with the arrest anyway in the  
11 afternoon?

12 MS. BAUMGARTNER: Objection. Incomplete  
13 hypothetical. Calls for speculation.

14 MR. SCOTT: Q. Go ahead.

15 A. Yes, I would have.

16 Q. Why?

17 A. Because this case was predicated on  
18 physical evidence, escalating violence, as reported by  
19 the victim, and lethality factors, that suggested this  
20 could easily be a domestic violence homicide.

21 And I felt that we had a legal and ethical  
22 responsibility to make an arrest in this case.

23 Q. And is that why you wanted enhanced bail?

24 A. Yes.

25 Q. Did you think enhancing the bail from



1 Q. Did Captain Cashman tell you he did not  
2 want to make the arrest?

3 A. No.

4 Q. Was that an option?

5 MS. BAUMGARTNER: Objection. Calls for  
6 speculation.

7 MR. SCOTT: Q. Go ahead.

8 A. He -- You know, working with Captain  
9 Cashman could be quite vocal about certain things.

10 His role in this was administrative, and  
11 if he had any opinion as to the arrest, I had never  
12 heard it; he never voiced it.

13 Q. Okay.

14 A. And no one -- You know, to clarify  
15 something: Nobody wanted to make this arrest. This is  
16 never -- This is never a good thing.

17 Q. Why was -- To your knowledge, who made the  
18 decision to arrest before a warrant was obtained?

19 A. I ultimately made that decision, in  
20 discussion with Deputy Chief Tabak and Captain Keohane.

21 Q. Well, was it their decision or your  
22 decision?

23 A. It was my decision, supported by them.

24 Q. What does that mean, "supported by them"?

25 A. Well, I certainly am not going to make an

1 although. . .

2 Q. So, between --

3 A. -- separating out the administrative  
4 issues, versus the criminal issues, the highest-ranking  
5 person there of an investigative nature was Deputy  
6 Chief Tabak.

7 Q. So he was the final decision-maker.

8 A. In the investigative sense, yes, but he  
9 wasn't -- I didn't go to him and ask permission.

10 I went to him to discuss the factors of  
11 this case, to see if there were concerns that we  
12 hadn't addressed and, in a sense, to involve him in  
13 the decision to make the arrest.

14 Q. So, you essentially told him you planned  
15 on making the arrest without a warrant --

16 A. I supported the arrest, yes.

17 Q. Well, did you tell him you were going to  
18 make an arrest without a warrant, and just as a  
19 courtesy, told him, or were you asking for his  
20 permission?

21 A. I was asking for his advice.

22 Q. And what was his advice?

23 A. He reviewed the lethality factors, and he  
24 supported the idea of making the arrest outside of a  
25 warrant.

1 Q. And whose idea was it?

2 A. Mine.

3 Q. Okay. And if it had been his decision to  
4 arrest, would he have been the arresting officer?

5 A. He certainly could have been, although  
6 that would have been unlikely.

7 Q. Well, if it had been his decision, should  
8 he have been identified as the arresting officer?

9 MS. BAUMGARTNER: Objection. Calls for  
10 speculation. Vague.

11 THE WITNESS: Again, "arresting officer"  
12 is a term that has no clear definition to me.

13 MR. SCOTT: Okay. I'm going to mark as  
14 Exhibit No. 2 an Incident Report, two pages. It was  
15 Exhibit 4 to Mr. Cook's deposition, and it will be  
16 Exhibit 2 to this deposition.

17 (Incident Report marked Plaintiff's  
18 Exhibit 2 for identification.)

19 MR. SCOTT: Q. Do you recognize this  
20 document?

21 A. (Reviewing the document.) Yes.

22 Q. And what is it?

23 A. It's a San Francisco Police Report.

24 Q. Have you seen it before today?

25 A. I don't recall seeing it. In my review of

STATE OF CALIFORNIA )  
 ) ss.  
 )

CERTIFICATE OF REPORTER

I, A. MAGGI SAUNDERS, a Certified Shorthand Reporter in and for the State of California, duly appointed and licensed to administer oaths and so forth, do hereby certify:

That the witness named in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth;

That the deposition was reported by me, a Certified Shorthand Reporter and disinterested person, and thereafter transcribed into typewriting under my direction;

That if the deposition has not been signed by the time of trial, a reasonable opportunity having been given the witness to do so, signature has been waived in accordance with stipulation between counsel.

IN WITNESS WHEREOF, I have hereunto set my hand and subscribed my signature this 21st day of January, 2008.

*A. Maggi Saunders C.S.R.*

A. MAGGI SAUNDERS, C.S.R. No. 2755,  
Certified Shorthand Reporter,  
In and For the State of California



**A. Maggi Saunders & Associates**  
Certified Shorthand Reporters

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License No. 2755

(415) 383-6281

# **EXHIBIT "B"**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

---oOo---

CLIFFORD COOK,

Plaintiff,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO, ANTONIO FLORES, DON  
SLOAN, MARSHA ASHE, and DOES  
1-50, inclusive,

Defendants.

No. C 07 02569 CRB

DEPOSITION OF DEPUTY CHIEF KEVIN CASHMAN

March 21, 2008

REPORTED BY: A. MAGGI SAUNDERS,

C.S.R. No. 2755

**DISK  
ENCLOSED**



A. Maggi Saunders & Associates  
Certified Shorthand Reporters

57 Plymouth Avenue, Mill Valley, California 94941

License No. 2755

(415) 383-6281

1 BE IT REMEMBERED that, pursuant to Notice  
2 of Taking Deposition, and continued by Stipulation,  
3 and on Friday, the 21st day of March, 2008,  
4 commencing at the hour of 12:15 o'clock p.m. thereof,  
5 at the SCOTT LAW FIRM, 1375 Sutter Street, Suite 222,  
6 San Francisco, California 94109, (415) 561-9600,  
7 before me, A. MAGGI SAUNDERS, a Certified Shorthand  
8 Reporter in and for the State of California, there  
9 personally appeared

10  
11 DEPUTY CHIEF KEVIN CASHMAN,  
12  
13 called as a witness by the Plaintiff CLIFFORD COOK,  
14 who, being by me first duly sworn, was thereupon  
15 examined and interrogated as hereinafter set forth.  
16

17 ---oOo---

18  
19 SCOTT LAW FIRM, 1375 Sutter Street, Suite  
20 222, San Francisco, California 94109, (415) 561-9600,  
21 represented by JOHN HOUSTON SCOTT, ESQ., appeared as  
22 counsel on behalf of Plaintiff CLIFFORD COOK.  
23

24 DENNIS J. HERRERA, CITY ATTORNEY, OFFICE OF  
25 THE CITY ATTORNEY, CITY AND COUNTY OF SAN FRANCISCO,



1 1390 Market Street, Sixth Floor, San Francisco,  
2 California 94102, (415) 554-3800, represented by  
3 MARGARET W. BAUMGARTNER, DEPUTY CITY ATTORNEY,  
4 appeared as counsel on behalf of Defendants CITY AND  
5 COUNTY OF SAN FRANCISCO, ET AL..  
6  
7

8 ALSO PRESENT WAS CLIFFORD COOK, THE PLAINTIFF.  
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1 with probable cause --

2 Q. Right.

3 A. -- at any time. So, anybody with probable  
4 cause legally could make the arrest.

5 Q. Right. I understand that.

6 A. That's my answer.

7 Q. Okay. So, there was no reason to discuss  
8 whether to arrest -- whether it was -- whether  
9 Captain -- I'm sorry -- Inspector Cook should be  
10 arrested or not at this meeting, correct?

11 A. Well, I just -- You know, I kind of  
12 answered that a few times now:

13 Only that I know a decision was made  
14 prior to the arrest. Whether it was at that meeting,  
15 I couldn't definitely say it was at that meeting, or  
16 during this ebb-and-flow of people going in and out  
17 of Room 400 --

18 Q. Okay.

19 A. -- so it -- at some time a decision was  
20 made to make the arrest.

21 Q. Let me ask it in another way.

22 A. Sure.

23 Q. At that meeting at 9:30 in the morning,  
24 did you hear Captain Ashe say, "I'm going to arrest --  
25 I've made a decision to arrest Inspector Cook?

STATE OF CALIFORNIA )  
 ) ss.  
 )

CERTIFICATE OF REPORTER

I, A. MAGGI SAUNDERS, a Certified Shorthand Reporter in and for the State of California, duly appointed and licensed to administer oaths and so forth, do hereby certify:

That the witness named in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth;

That the deposition was reported by me, a Certified Shorthand Reporter and disinterested person, and thereafter transcribed into typewriting under my direction;

That if the deposition has not been signed by the time of trial, a reasonable opportunity having been given the witness to do so, signature has been waived in accordance with stipulation between counsel.

IN WITNESS WHEREOF, I have hereunto set my hand and subscribed my signature this 2nd day of April, 2008.

*A. Maggi Saunders CSR*

A. MAGGI SAUNDERS, C.S.R. No. 2755,  
Certified Shorthand Reporter,  
In and For the State of California



A. Maggi Saunders & Associates  
Certified Shorthand Reporters

57 Plymouth Avenue, Mill Valley, California 94941

License No. 2755

(415) 383-6281

# EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

---oOo---

CLIFFORD COOK,

Plaintiff,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO, ANTONIO FLORES, DON  
SLOAN, MARSHA ASHE, and DOES  
1-50, inclusive,

Defendants.

No. C-07-02569 CRB

DEPOSITION OF LIEUTENANT DON SLOAN

March 17, 2008

REPORTED BY: A. MAGGI SAUNDERS,

C.S.R. No. 2755



**A. Maggi Saunders & Associates**  
**Certified Shorthand Reporters**

57 Plymouth Avenue, Mill Valley, California 94941

License No. 2755

(415) 383-6281

1 BE IT REMEMBERED that, pursuant to Notice  
2 of Taking Deposition, and on Monday, the 17th day of  
3 March, 2008, commencing at the hour of 1:00 o'clock  
4 p.m. thereof, at the SCOTT LAW FIRM, 1375 Sutter  
5 Street, Suite 222, San Francisco, California 94109,  
6 (415) 561-9600, before me, A. MAGGI SAUNDERS, a  
7 Certified Shorthand Reporter in and for the State of  
8 California, there personally appeared

9  
10 LIEUTENANT DON SLOAN,  
11  
12 called as a witness by the Plaintiff CLIFFORD COOK,  
13 who, being by me first duly sworn, was thereupon  
14 examined and interrogated as hereinafter set forth.

15  
16 ---oOo---  
17

18 SCOTT LAW FIRM, 1375 Sutter Street, Suite  
19 222, San Francisco, California 94109, (415) 561-9600,  
20 represented by JOHN HOUSTON SCOTT, ESQ., appeared as  
21 counsel on behalf of Plaintiffs CLIFFORD COOK.

22  
23 DENNIS J. HERRERA, CITY ATTORNEY, OFFICE OF  
24 THE CITY ATTORNEY, CITY AND COUNTY OF SAN FRANCISCO,  
25 1390 Market Street, Sixth Floor, San Francisco,



1 California 94102, (415) 554-3800, represented by  
2 MARGARET W. BAUMGARTNER, DEPUTY CITY ATTORNEY,  
3 appeared as counsel on behalf of Defendants CITY AND  
4 COUNTY OF SAN FRANCISCO, ET AL..

5  
6 LEGAL VIDEOS, LLC, 4340 Redwood Highway,  
7 Suite 150, San Rafael, California 94903, (415)  
8 459-7672, represented by GABE ABENDROTH, TRIAL  
9 TECHNICIAN/VIDEOGRAPHER, appeared to Videotape the  
10 proceedings on behalf of THE PLAINTIFF.

11  
12 ALSO PRESENT WAS CLIFFORD COOK, THE PLAINTIFF.



1 worked up, was part of the process finding out when the  
2 District Attorney was prepared to go to warrant?

3 A. I don't understand your question.

4 Q. Well, this workup for a warrant, is this a  
5 process that's engaged in between your inspectors and  
6 the District Attorney, where at some point a decision  
7 was made to go to warrant?

8 A. Yes.

9 Q. Okay. Who makes that decision?

10 A. The District Attorney.

11 Q. Okay. And was it normal policy and  
12 practice to wait until the District Attorney was ready  
13 to go to warrant before making an arrest?

14 A. Not always.

15 Q. Okay. What would be the exceptions?

16 A. Immediacy of the case. The report had  
17 come in. The whereabouts of the subject -- or suspect  
18 is known; and I guess timeliness, a case would be -- or  
19 the subject would be arrested on a no-warrant basis.

20 Q. What do you mean by that?

21 A. Meaning -- I'll use myself for an example:

22 Say, I abused my wife. And 24 hours  
23 later I'm seen walking down the street, and it's a  
24 case where the -- the elements of domestic violence  
25 are there, a black eye, call it what you will. An

1 Inspector made the arrest. I felt that the  
2 higher-ranking officers involved, or with the unit,  
3 should make the arrest, the physical arrest.

4 Q. And did you take Inspector Cook into  
5 custody?

6 A. Yes.

7 Q. Do you recall where that occurred?

8 A. He was sitting in the lobby of the hall,  
9 and I recall asking him to come upstairs with me.

10 And then, once we were upstairs, or en  
11 route, I don't recall which, I informed Inspector  
12 Cook what was transpiring, that he was under arrest.

13 Q. Did you tell him he was under arrest when  
14 you first saw him in the hall?

15 A. No, I did not.

16 Q. Okay. Well, was he under arrest?

17 A. Yes.

18 MS. BAUMGARTNER: Objection: Calls for a  
19 legal conclusion.

20 MR. SCOTT: Q. Well, I'm just asking for  
21 your opinion.

22 A. In my mind, he was under arrest.

23 Q. Okay. Even though you didn't tell him he  
24 was under arrest?

25 A. Correct.



1 Q. Do you recall at any time when Inspector  
2 Cook was in the room that you were asked if you would  
3 interview him before you arrested him?

4 A. I don't recall that.

5 Q. Okay. Did you tell people in the room  
6 that, it wouldn't matter what he said, he was going to  
7 be arrested anyway?

8 A. I don't recall saying -- making a  
9 statement like that.

10 Q. Okay. Is it your testimony you didn't, or  
11 you just don't recall?

12 A. I don't recall making a statement like  
13 that.

14 Q. Okay. Was there some reason you would not  
15 have taken an interview from Inspector Cook before  
16 arresting him?

17 A. Yes. I felt he should have appropriate  
18 legal representation.

19 Q. Even if he didn't want it?

20 A. Yes.

21 Q. All right. And didn't you assume that  
22 most lawyers would tell him not to talk?

23 A. I did assume that.

24 Q. Okay. So you didn't really want to know  
25 what he had to say.

DEPOSITION OF LIEUTENANT DON SLOAN

STATE OF CALIFORNIA ) ss.  
)

CERTIFICATE OF REPORTER

I, A. MAGGI SAUNDERS, a Certified Shorthand Reporter in and for the State of California, duly appointed and licensed to administer oaths and so forth, do hereby certify:

That the witness named in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth;

That the deposition was reported by me, a Certified Shorthand Reporter and disinterested person, and thereafter transcribed into typewriting under my direction;

That if the deposition has not been signed by the time of trial, a reasonable opportunity having been given the witness to do so, signature has been waived in accordance with stipulation between counsel.

IN WITNESS WHEREOF, I have hereunto set my hand and subscribed my signature this 18th day of March, 2008.

A. Maggi Saunders CSR

A. MAGGI SAUNDERS, C.S.R. No. 2755,  
Certified Shorthand Reporter,  
In and For the State of California



A. Maggi Saunders & Associates  
Certified Shorthand Reporters

57 Plymouth Avenue. Mill Valley, California 94941

License No. 2755

(415) 383-6281

# **EXHIBIT "D"**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

---oOo---

CLIFFORD COOK,

Plaintiff,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO, ANTONIO FLORES, DON  
SLOAN, MARSHA ASHE, and DOES  
1-50, inclusive,

Defendants.

No. C 07-02569 CRB

DEPOSITION OF INSPECTOR ANTONIO FLORES

April 3, 2008

REPORTED BY: A. MAGGI SAUNDERS,

C.S.R. No. 2755



A. Maggi Saunders & Associates  
Certified Shorthand Reporters

57 Plymouth Avenue, Mill Valley, California 94941

License No. 2755

(415) 383-6281

1 BE IT REMEMBERED that, pursuant to Notice  
2 of Taking Deposition, and on Thursday, the 3rd day of  
3 April, 2008, commencing at the hour of 12:18 o'clock  
4 p.m. thereof, at the SCOTT LAW FIRM, 1375 Sutter  
5 Street, Suite 222, San Francisco, California 94109,  
6 (415) 561-9600, before me, A. MAGGI SAUNDERS, a  
7 Certified Shorthand Reporter in and for the State of  
8 California, there personally appeared  
9

10 INSPECTOR ANTONIO FLORES,  
11  
12 called as a witness by the Plaintiff CLIFFORD COOK,  
13 who, being by me first duly sworn, was thereupon  
14 examined and interrogated as hereinafter set forth.  
15

16 ---oOo---

17  
18 SCOTT LAW FIRM, 1375 Sutter Street, Suite  
19 222, San Francisco, California 94109, (415) 561-9600,  
20 represented by JOHN HOUSTON SCOTT, ESQ., appeared as  
21 counsel on behalf of Plaintiff CLIFFORD COOK.  
22

23 DENNIS J. HERRERA, CITY ATTORNEY, OFFICE OF  
24 THE CITY ATTORNEY, CITY AND COUNTY OF SAN FRANCISCO,  
25 1390 Market Street, Sixth Floor, San Francisco,



1 California 94102, (415) 554-3800, represented by  
2 MARGARET W. BAUMGARTNER, DEPUTY CITY ATTORNEY,  
3 appeared as counsel on behalf of Defendants CITY AND  
4 COUNTY OF SAN FRANCISCO, ET AL.

5  
6 ALSO PRESENT WAS CLIFFORD COOK, THE PLAINTIFF.  
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1                   So, sometimes the cases could go very  
2 fast, or these cases could take a little longer.

3                   Q.     All right.

4                   And if I understand you correctly, there  
5 is essentially two categories of cases when you get  
6 them:

7                   Either an arrest has been made, or an  
8 arrest has not been made, when you get the case.

9                   A.     Yes.

10                  Q.     Okay. And approximately over the last  
11 seven years what percentage of the cases assigned to  
12 you have been cases where the arrest has already been  
13 made by the time you get the file?

14                  A.     Um, I would say a large majority, maybe  
15 about 75 percent of the cases in the year are usually  
16 arrest.

17                  Q.     And in those approximate 75 percent of the  
18 cases where the arrest has been made by the time you  
19 get the case, are there sometimes time constraints, in  
20 terms of how soon you have to complete your  
21 investigation?

22                  A.     Yes.

23                  Q.     And why is that?

24                  A.     There is a day in the week that we don't  
25 have the luxury of the 72 hours, that we have to

1           A.     Well, that it makes the determination,  
2 sometimes the suspect is gone.

3           Q.     Okay.

4           A.     Or the victim has walked in days later,  
5 and made reports regarding incidences of violence,  
6 and -- or maybe they went to the hospital.

7                     And so there are factors, several  
8 factors as to why the case is assigned.

9           Q.     Okay. So the -- this other 25 percent,  
10 plus or minus, where an arrest has not been made, but  
11 you've gotten a case, it could be for a number of  
12 reasons:

13                    One reason could be, the complaint was  
14 made right away, and the police went to the scene, but  
15 the husband, or whoever did the attack, wasn't there,  
16 couldn't be found, he skipped.

17                    And you have time, because while -- up  
18 until the time he gets found and -- or assuming you  
19 are going to arrest him -- you have time to take it  
20 to the DA, because the 72 hours hasn't started,  
21 because the arrest hasn't been made.

22                    MS. BAUMGARTNER: Objection: Compound.

23                    MR. SCOTT: Q. Go ahead. Is that one  
24 scenario?

25           A.     Yes and no.



DEPOSITION OF INSPECTOR ANTONIO FLORES

1 Q. Okay.

2 A. Because, sometimes, if the person is gone,  
3 it may be that there is a likelihood, after looking at  
4 the case in a whole, you can say, "We need to find this  
5 person, and we need to go get them right now."

6 Q. Okay.

7 A. And so, you may just go out, without  
8 presenting the case to the DA; and that person is  
9 arrested, based on the information that the officers  
10 have.

11 Q. No, I understand that.

12 But what if you can't find the person?

13 A. Then, we start going through the process  
14 of: If we cannot locate the person, and after the  
15 several steps that we try, then, that case was -- will  
16 be assigned to a -- or given to the DA, whoever is the  
17 head of the Domestic Violence Unit down in the DA's  
18 office --

19 Q. Mm-hmm.

20 A. -- and then that case is presented to them  
21 and you say either, "Can I apply for a warrant or, no";  
22 or they'll give you more things to do on the case, and  
23 a determination will be made, and you'll try to get a  
24 warrant, and then you go through that process.

25 Q. And why do you try to get a warrant?

1 A. Well, in case the individual might have  
2 left town. They might have gone; they might have gone  
3 someplace else. There are several factors of why.

4 Q. Now, in the other 25 percent, one scenario  
5 could be that the victim who is complaining waited days  
6 or weeks after the alleged incident to complain about  
7 it.

8 A. Yes.

9 Q. Okay. And that's one scenario.

10 A. Yes.

11 Q. And Clifford Cook's case would fall within  
12 that category.

13 A. Yes.

14 Q. And in those cases, what do you usually do  
15 to investigate them, before you make an arrest?

16 A. I like to talk to the victim.

17 Q. Why is that?

18 A. Because I want to get the information, the  
19 facts of the case, of what's actually going on.

20 Q. And what else do you want to do?

21 A. I want to determine if actually the crime  
22 has occurred.

23 Q. Do you want to talk to the suspect?

24 A. Yes, I do.

25 Q. Why?

DEPOSITION OF INSPECTOR ANTONIO FLORES

1 been a delay in somebody making a complaint to you,  
2 like in this case, the Cook Case, is there a protocol  
3 or a -- procedures you usually follow, as part of your  
4 investigation, when you get one of these complaints?

5 A. Regarding -- Are we focusing strictly on  
6 Mr. Cook's case?

7 Q. Or cases like his, where a spouse has come  
8 in a week or so after the alleged assault --

9 A. Mm-hmm.

10 Q. -- and made a complaint --

11 A. Mm-hmm.

12 Q. -- and you've got the case; an arrest  
13 hasn't been made.

14 In those situations -- I assume his isn't  
15 the only case where some victim waited about a week  
16 plus or minus, and made a complaint, right?

17 A. Yes.

18 Q. It's not that unusual, right?

19 A. No, it's not unusual.

20 Q. Okay. Is there a protocol you follow in  
21 those cases?

22 A. Well, if a -- the person was to come off  
23 the street and just walk into our office and I had the  
24 case and -- or maybe to give you a hypothetical like  
25 this is that we'd sit down and we'd start talking about

1 the case and get an interview with them.

2 And as the case is going, then I'm going  
3 to tell them, "Well, I would like you to do this,  
4 this, and this for me."

5 In other words: Medical release; do you  
6 have any additional witnesses; get phone numbers.  
7 Have they called you before? Please save those  
8 messages. Do not change your phone number.

9 You know, then we start talking about,  
10 because this person is still out there -- and I kind  
11 of make it very clear with them: With or without  
12 their cooperation --

13 Q. Mm-hmm.

14 A. -- it's up to the DA's office to go  
15 forward with this case.

16 Q. Well, why do you do that?

17 A. Well, there are some victims out there  
18 that feel that -- that they still have this  
19 relationship, and it has to do with love.

20 And within this loving relationship that  
21 they have, they don't want to be the bad person.

22 And sometimes they feel that, if they  
23 ever go back to the relationship, they can say, "You  
24 know, it wasn't me that was pressing charges against  
25 you. It was the State or the Police, or whoever."

## DEPOSITION OF INSPECTOR ANTONIO FLORES

1 Q. Okay.

2 A. And -- But, again, if they decide to go in  
3 another direction, which we know, that the victim will  
4 go back to the batterer, because -- again, because of  
5 the relationship: Long-term; maybe they have financial  
6 stuff together; maybe they have children together;  
7 maybe they are -- you know, because of a controlling  
8 thing that the suspect may have over the victim, or the  
9 victim has over the suspect, it could be all these  
10 different things.

11 So, at that point, that is why we kind of  
12 tell those victims that. And we know that, down the  
13 road, that this is a possibility.

14 Q. Okay. And based on your investigation of  
15 the Cliff Cook case, did you get information that  
16 somehow he was controlling his wife Lisa?

17 A. There was -- There was --  
18 There was some signs that were there.

19 Q. Was she financially dependent on him?

20 A. I believe so.

21 Q. And why do you believe that?

22 A. Because there were times when, when I  
23 would ask her, for instance, she would say that she  
24 didn't have any money; or that Mr. Cook wanted her to  
25 sign over a Pink Slip to a Mercedes Benz that she was

1 domestic violence before a warrant review was done by  
2 the District Attorney's Office because it was  
3 escalating? Did somebody tell you that?

4 MS. BAUMGARTNER: That question is vague.  
5 He's testified about the people that he has  
6 participated in.

7 MR. SCOTT: Okay.

8 MS. BAUMGARTNER: He has not testified  
9 generally about the San Francisco Police Department's  
10 DVR Unit as a whole.

11 MR. SCOTT: Let me withdraw the question.

12 Q. Did you believe these escalating factors  
13 that you've referred to was a reason to arrest Mr. Cook  
14 before the DA did a warrant review?

15 MS. BAUMGARTNER: Objection: Vague. What  
16 do you mean, "was a reason"? He didn't --

17 MR. SCOTT: He's the one who volunteered  
18 that information. I asked him why this case was  
19 different than the others.

20 MS. BAUMGARTNER: Are you asking him to  
21 continue the answer to that question.

22 MR. SCOTT: Yeah. Yeah, if he can.

23 THE WITNESS: I'm sorry, could you repeat  
24 that?

25 MR. SCOTT: Q. Yeah. I'm trying to find

1 out if you believe that Mr. Cook should have been  
2 arrested before the DA did a warrant review because of  
3 these escalating factors you've mentioned?

4 MS. BAUMGARTNER: So you are asking his  
5 opinion --

6 MR. SCOTT: Yeah --

7 MS. BAUMGARTNER: -- about whether he  
8 should have been arrested?

9 MR. SCOTT: -- I sure am.

10 MS. BAUMGARTNER: Objection: Vague.

11 MR. SCOTT: Q. Go ahead.

12 A. Yes.

13 Q. Okay. Why?

14 A. Because as I stated before: Because it  
15 was getting a little worse.

16 Q. Okay. Were they separated?

17 A. Were they separated?

18 Q. Yeah, at the time of the arrest of  
19 Mr. Cook.

20 A. At the time of the arrest, no, not that I  
21 know of, no.

22 Q. They were still living together; that was  
23 your understanding?

24 A. Oh. I thought that you meant --  
25 I'm sorry, I thought you meant --

1 Q. Were they living together?

2 A. I mean, dissolved, that the marriage was  
3 dissolved.

4 Q. No. Were they living together?

5 A. Not that I knew of, no.

6 Q. And his weapons had been taken from him,  
7 correct?

8 A. That's what I was told.

9 Q. Okay. And you understood, or it was  
10 reported to you, he was suicidal?

11 A. That's what I was told.

12 Q. And did -- was one of the escalating  
13 factors, or reasons to arrest him is because she  
14 reported that he was suicidal?

15 A. Is -- I'm sorry?

16 Q. Is that one of the reasons you think he  
17 should have been arrested, because of the report that  
18 he was suicidal?

19 A. If you are asking my opinion --

20 Q. Mm-hmm, I am.

21 A. -- I think it was the totality of  
22 everything.

23 Q. All right. Was -- Did you refer him for  
24 Fitness For Duty, or some kind of psychiatric  
25 evaluation?



DEPOSITION OF INSPECTOR ANTONIO FLORES

1 Ashe and Captain Sloan and others that morning before  
2 you went to the DA's Office?

3 A. You mean, Lieutenant Sloan?

4 Q. Yes, Lieutenant Sloan.

5 A. He was there. And I believe Deputy Chief  
6 Tabak was there.

7 Q. Right.

8 A. Yes.

9 Q. You were at that meeting?

10 A. Yes.

11 Q. And what did you understand to be the  
12 purpose of that meeting?

13 A. It was to brief everybody about what had  
14 been going on, or what I had learned up to that point.

15 Q. Okay. To your knowledge, were any  
16 decisions made at that meeting in terms of whether to  
17 arrest Inspector Cook at that time?

18 A. Not that I can recall.

19 Q. Okay. And when you left the meeting, as  
20 far as you knew, you were going to investigate the case  
21 further, with the assistance of Inspector Ciardella.

22 A. Yes.

23 Q. And at that point you anticipated that you  
24 would work up the case for a warrant.

25 A. It was actually at the meeting that I was

DEPOSITION OF INSPECTOR ANTONIO FLORES

1 A. I believe it was there, and one more time.

2 Q. And did he tell you why he wanted you to  
3 get a bail enhancement?

4 A. Because of the seriousness of the case.

5 Q. Those were his words?

6 A. No. That's -- I believe that's why he  
7 wanted it.

8 Q. But did he tell you why, or you are just  
9 assuming --

10 A. He ordered me to get a bail enhancement.

11 Q. Okay. And did you ask him why?

12 A. I can't recall if I did or not.

13 Q. Okay. Did you think a bail enhancement  
14 was warranted in the case?

15 A. No.

16 Q. Why not?

17 A. Well, I believed, I thought, if they were  
18 going to arrest him, there would be several charges  
19 there, which would have made the bail high, if they  
20 were going to arrest.

21 Q. Did you think he was a flight risk?

22 A. No.

23 Q. Did you think, by enhancing the bail, it  
24 was going to be more difficult for him to bail out?

25 A. Yes.

1 Q. Okay. You didn't think he would be able  
2 to make the bail?

3 A. Honestly, I don't know.

4 Q. And did you believe, or was it your  
5 impression, from your conversation with Lieutenant  
6 Sloan, that he wanted to make the bail high, so  
7 Mr. Cook wouldn't be able to bail out?

8 A. I believe so.

9 Q. Okay. And did you understand, a Police  
10 Officer being in custody in a jail, can be  
11 life-threatening?

12 A. I know that.

13 Q. You know that.

14 A. Yes.

15 Q. Okay. And did you discuss that with  
16 Lieutenant Sloan that, if Inspector Cook wasn't able to  
17 bail out, it could be life-threatening?

18 A. Well, seeing that, you know, in past  
19 practices of the Jail, that he would be isolated from  
20 anybody else in general population. That's what I do  
21 know, so; but I never had that conversation with  
22 Lieutenant Sloan.

23 Q. Did -- Well, how long did the meeting with  
24 Ms. Aguilar-Tarchi last after it was interrupted by  
25 Lieutenant Sloan?

DEPOSITION OF INSPECTOR ANTONIO FLORES

1 A. Probably less than five minutes.

2 Q. And what do you recall about those  
3 minutes, those less-than-five minutes, what was  
4 discussed?

5 A. I think she had the same look as we had.

6 Q. Which was?

7 A. You know, shock;

8 And she handed back the documents that I  
9 had given her, and it was to the effect of, "Come  
10 back when it's done for the rebooking."

11 Q. And what did that -- What did you  
12 understand that to mean, "when it's done"?

13 A. Well, now that he had -- Mr. Cook had been  
14 arrested.

15 Q. The 72 hours are running?

16 A. We are now in a predicament, that now we  
17 have to gather all our documents;

18 We have a police report to write;

19 We have a bail enhancement to do;

20 We have to get enough information  
21 documented on the Chronological Investigation Report;

22 So, it means we're going fast.

23 Q. And it compromised your ability to do an  
24 investigation in 72 hours, didn't it?

25 A. Yes.

1 Q. Did anyone ever suggest to you that this  
2 case was treated differently because Inspector Cook was  
3 a black man married to a white woman?

4 A. No.

5 Q. Did you ever think that?

6 A. No.

7 Q. Why do you think this case was treated  
8 differently than others?

9 MS. BAUMGARTNER: Objection. Calls --  
10 Based on facts not in evidence, necessarily, that this  
11 case was treated differently, but go ahead.

12 THE WITNESS: I don't think his case is  
13 different from other cases.

14 I mean, if you took minus him being a  
15 police officer, there is several incidences where  
16 someone has been arrested later on, after the fact  
17 the incident has occurred.

18 MR. SCOTT: Q. Right. And plenty where  
19 it went to a warrant workup --

20 A. Yes.

21 Q. -- right?

22 A. Yes.

23 Q. Now, I'm not suggesting he's the only  
24 person in the history of the San Francisco Police  
25 Department who was arrested before a warrant workup;

STATE OF CALIFORNIA )  
 ) ss.  
 )

CERTIFICATE OF REPORTER

I, A. MAGGI SAUNDERS, a Certified Shorthand Reporter in and for the State of California, duly appointed and licensed to administer oaths and so forth, do hereby certify:

That the witness named in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth;

That the deposition was reported by me, a Certified Shorthand Reporter and disinterested person, and thereafter transcribed into typewriting under my direction;

That if the deposition has not been signed by the time of trial, a reasonable opportunity having been given the witness to do so, signature has been waived in accordance with stipulation between counsel.

IN WITNESS WHEREOF, I have hereunto set my hand and subscribed my signature this 5th day of April, 2008.

A. Maggi Saunders CSR

A. MAGGI SAUNDERS, C.S.R. No. 2755,  
Certified Shorthand Reporter,  
In and For the State of California



A. Maggi Saunders & Associates  
Certified Shorthand Reporters

57 Plymouth Avenue, Mill Valley, California 94941

License No. 2755

(415) 383-6281

# EXHIBIT "E"

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

---oOo---

CLIFFORD COOK,

Plaintiff,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO, ANTONIO FLORES, DON  
SLOAN, MARSHA ASHE, and DOES  
1-50, inclusive,

Defendants.

No. C-07-02569 CRB

DEPOSITION OF ELIZABETH AGUILAR-TARCHI

March 21, 2008

REPORTED BY: A. MAGGI SAUNDERS,

C.S.R. No. 2755

**DISK  
ENCLOSED**



**A. Maggi Saunders & Associates**  
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57 Plymouth Avenue, Mill Valley, California 94941

License No. 2755

(415) 383-6281



1 BE IT REMEMBERED that, pursuant to Notice  
2 of Taking Deposition, and on Friday, the 21st day of  
3 March, 2008, commencing at the hour of 10:00 o'clock  
4 a.m. thereof, at the SCOTT LAW FIRM, 1375 Sutter  
5 Street, Suite 222, San Francisco, California 94109,  
6 (415) 561-9600, before me, A. MAGGI SAUNDERS, a  
7 Certified Shorthand Reporter in and for the State of  
8 California, there personally appeared

9  
10 ELIZABETH AGUILAR-TARCHI,  
11  
12 called as a witness by the Plaintiff CLIFFORD COOK,  
13 who, being by me first duly sworn, was thereupon  
14 examined and interrogated as hereinafter set forth.  
15

16 ---oOo---

17  
18 SCOTT LAW FIRM, 1375 Sutter Street, Suite  
19 222, San Francisco, California 94109, (415) 561-9600,  
20 represented by JOHN HOUSTON SCOTT, ESQ., appeared as  
21 counsel on behalf of Plaintiff CLIFFORD COOK.  
22

23 DENNIS J. HERRERA, CITY ATTORNEY, OFFICE OF  
24 THE CITY ATTORNEY, CITY AND COUNTY OF SAN FRANCISCO,  
25 1390 Market Street, Sixth Floor, San Francisco,



1 California 94102, (415) 554-3800, represented by  
2 MARGARET W. BAUMGARTNER, DEPUTY CITY ATTORNEY,  
3 appeared as counsel on behalf of Defendants .  
4

5 ALSO PRESENT WAS CLIFFORD COOK, THE PLAINTIFF.  
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1 Q. Okay. And did they -- Did they tell you  
2 that they wanted you to review the case for any  
3 particular purpose?

4 A. No; because, again, it wasn't a rebooking.  
5 I don't think we ever got that far  
6 because, as I said, the meeting was brief.

7 But, obviously, their purpose must have  
8 been to tell me, "We have a situation. What might be  
9 needed by your office? What might you look at,"  
10 based on my experience.

11 Q. So, based on your experience, was it your  
12 understanding they were there to either find out if you  
13 thought there was enough to charge the case, or whether  
14 it should be worked-up for a warrant?

15 A. No. It was neither a warrant workup --  
16 that's a very different precise -- because they would  
17 come down with a packet --

18 Q. Okay.

19 A. -- and I would have a formal memo that I  
20 would prepare to say, "Oh, it's a warrant review."

21 It was not that; I definitely I know it  
22 wasn't that.

23 And it was not a rebooking, i.e., there  
24 was no one under arrest, that would trigger me  
25 filling out a particular form, to make a decision

1 that day.

2 Q. Okay.

3 A. It was an informal discussion.

4 Q. Okay. And when --

5 Did they provide you with enough  
6 information, that you felt that there was enough to  
7 have the case charged?

8 A. I don't think we got that far.

9 I remember it being very brief;  
10 mentioning that it was a member of the SFPD; and that  
11 there had been a domestic violence incident.

12 And I remembered -- The door was closed,  
13 someone knocking, and that someone was Lieutenant,  
14 stating "Inspector -- Oh, there has been an arrest, you  
15 don't have to have any discussion."

16 And I just -- I paused. That was it.

17 Q. And why did that mean there didn't have to  
18 be a discussion?

19 A. Because, if there has been an arrest, they  
20 are going to bring me a case later for review.

21 I wasn't formally making a decision. It  
22 was an informal, casual, I guess, they are telling  
23 him, "We have the case," or "We have -- We're  
24 handling the situation."

25 Q. Okay. And when is the next time you had

STATE OF CALIFORNIA )  
 ) ss.  
 )

CERTIFICATE OF REPORTER

I, A. MAGGI SAUNDERS, a Certified Shorthand Reporter in and for the State of California, duly appointed and licensed to administer oaths and so forth, do hereby certify:

That the witness named in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth;

That the deposition was reported by me, a Certified Shorthand Reporter and disinterested person, and thereafter transcribed into typewriting under my direction;

That if the deposition has not been signed by the time of trial, a reasonable opportunity having been given the witness to do so, signature has been waived in accordance with stipulation between counsel.

IN WITNESS WHEREOF, I have hereunto set my hand and subscribed my signature this 31st day of March, 2008.

A. Maggi Saunders C.S.R.

A. MAGGI SAUNDERS, C.S.R. No. 2755,  
Certified Shorthand Reporter,  
In and For the State of California



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